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SUBJECT: OSCE/PERMANENT COUNCIL: RESPONSE TO MANFRED

NOWAK, UN SPECIAL RAPPORTEUR ON TORTURE

1. On December 22, the UN Special Rapporteur on Torture, Manfred Nowak, will be giving remarks at the December 22 meeting of the OSCE Permanent Council. Although it is impossible to fully draft a U.S. responsive statement in advance of hearing Mr. Nowak's remarks, Post is authorized to draw relevant points from the "building blocks" text that appears below:

Begin Text:

Thank you, Mr. Chairman.

I would like to warmly welcome the UN Special Rapporteur to the Permanent Council, Mr. Nowak. Thank you for your report. It reinforces that freedom from torture is a basic human

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right and that the use of torture can never be justified.

The United States is unequivocally opposed to the use and practice of torture for any reason and at any time. We join and support the UN Special Rapporteur in his quest to eliminate torture. We also support the OSCE's work in this field and believe it is important for OSCE participating States to engage in dialogue regarding methods to prevent and combat torture and cruel, inhuman or degrading punishment or treatment.

The United States has discussed our position on torture at several recent OSCE events, including the Human Dimension Implementation Meeting in September. On May 6, the United States submitted its latest periodic report to the UN Committee Against Torture and submitted an update to the report's annex on detainee policy on October 21. The full text of this report is available on the State Department's website.

We are aware of concerns raised about the subject of cruel, inhuman or degrading treatment or punishment. As Secretary Rice has explained, as a matter of policy the United States government has chosen not to authorize interrogations involving cruel, inhuman, or degrading treatment, as defined by U.S. obligations under the UN Convention Against Torture, regardless of where those interrogations may occur. Last week, the President announced his support for new legislation that would codify this policy as a matter of U.S. law. We believe this legislation sends an important message that the United States does not tolerate or condone the use of torture or cruel, inhuman or degrading treatment or punishment.

We are also aware of concerns raised about U.S. renditions and so-called "secret prisons." As Secretary Rice made clear on her recent trip to Europe, the United States and many other governments are engaged in a difficult struggle against a ruthless enemy, transnational terrorists. All governments have a responsibility to protect their citizens from harm. The United States works cooperatively with countries around the world to achieve this objective. We are working together closely with allies and partners in Europe and globally to protect our citizens against a vicious terrorist adversary.

The war on terrorism sometimes involves the capture, detention and questioning of terrorists. We must question them to gather potentially significant, life-saving intelligence. Our law enforcement and intelligence cooperation has resulted in foiling a number of deadly plots against cities and citizens in Europe and elsewhere.

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As Secretary Rice and CIA Director Goss have recently stated, U.S. intelligence agencies have handled the gathering of intelligence from a very small number of extremely dangerous detainees, including individuals who planned the 9/11 attacks. United States policy is that this questioning is to be conducted within U.S. law and treaty obligations, without using torture. We will not confirm or deny specific intelligence activities; we cannot discuss information that could compromise the success of intelligence, law enforcement, and military operations. But no one should be surprised that intelligence agencies, both in the United States and around the world, engage in intelligence gathering activities.

With respect to detainees, the United States government complies with its Constitution, its laws and its treaty obligations. The United States does not commit, authorize, or condone torture. Where there have been cases of unlawful treatment of detainees, the U.S. has vigorously investigated and, where appropriate, prosecuted and punished those responsible.

The United States does not transport detainees from one country to another for the purpose of interrogation by torture and has not used the airspace or airports of any country for the purpose of transporting a detainee to a country where the detainee will be tortured. The United States has not transported anyone, and will not transport anyone, to a country when we believe the individual will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured. In conducting renditions, this Administration has respected and will continue to respect the sovereignty of other countries.

With respect to diplomatic assurances, the United States reserves the use of assurances for a very small number of cases where it can reasonably rely on such assurances that the individuals would not be tortured. If, taking into account all relevant information, including any assurances received, the United States believes that a person more likely than not will be tortured if returned to a foreign country, the United States would not approve the return of a person to that country. We agree that assurances are not a means to circumvent our obligations relating to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Indeed, assurances are not appropriate in every case, and assurances standing alone may not provide a clear answer to the careful, case-by-case determination of whether it is more likely than not that the

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individual will be tortured upon return to another country. In appropriate cases, however, reliable and credible assurances may enable the United States to remove, extradite, or otherwise return persons to another country consistent with U.S. obligations and policy relating to the Torture Convention.

Recognizing widespread interest in Guantanamo among our OSCE colleagues, Mr. Chairman, I am pleased to inform you that the United States Department of Defense recently invited Ms. Anne-Marie Lizin, a representative of the OSCE Parliamentary Assembly, to visit the Department of Defense detention facilities at Guantanamo Bay.

While at the Guantanamo center Ms. Lizin will receive briefings from the Commander, Joint Task Force Guantanamo and other senior command staff, medical personnel and operational staff. She will visit the camps and cells housing the detainees and medical facilities. She will observe operations, including recreation, religious, cultural and nutritional practices. The Department of Defense was pleased to issue this invitation in the interest of improving international understanding and fostering transparency in its operations at the Guantanamo facility. We understand that the visit will take place at a time convenient to Ms. Lizin early next year.

We regret that the UN Special Rapporteur has not accepted the Department of Defense's invitation to visit detention facilities at Guantanamo. While we have great respect for the UN human rights mechanisms involved, with respect to the treatment of those combatants held pursuant to the law of armed conflict, the United States, and other governments, have recognized the unique mandate and competence of the International Committee of the Red Cross (ICRC) as the entity with access to detention facilities and to detainees, internees, and prisoners of war. Nevertheless, in the interest of transparency and dialogue, the Department of Defense offered Mr. Nowak, along with the Special Rapporteur on the Right to Freedom of Religion or Belief, and the Chairperson of the Working Group on Arbitrary Detention, similar access to the facility to that given to United States Congressional delegations. We hope that Mr. Nowak would reconsider accepting our invitation.

Mr. Nowak, we thank you again for your efforts in combating torture and for presenting this report to the OSCE.

Thank you, Mr. Chairman.

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End Text.

2. Text of Department of State Press Guidance on the proposed visit of UN special rapporteurs to Guantanamo.

I Press Guidance
November 18, 2005

UN Special Rapporteurs - GTMO Access

Question:

What communications have we had with the UN Special Rapporteurs who want to go to GTMO?

Answer:

On October 27, the Department of Defense invited the United Nations Special Rapporteur on Torture, the Special Rapporteur on the Right to Freedom of Religion or Belief, and the Chairperson of the Working Group on Arbitrary Detention to visit its detention facility at Guantanamo Bay, Cuba.

The Department of Defense offered the UN special rapporteurs the level of access to the facility similar to that given to members of the United States Congress, namely:

- Meeting the Commander of Joint Task Force and receiving briefings from senior command, medical and interrogation staff;
- Visiting the camps and cells housing the detainees and medical facilities;
- Visiting new facilities under construction;
- Observing operations at the facilities, including recreation, religious, cultural, medical, and nutritional practices; and
- Visiting the Administrative Review Board facility and observing open sessions of the administrative proceedings.

The UN special rapporteurs nominally accepted that offer, but then demanded unrestricted access to the facility and detainees.

We are prepared to continue our dialog with the special rapporteurs and hope they will accept the offer to visit Guantanamo.

Question:

What is our rationale for denying them access to prisoners?
What are we trying to hide? What is the downside to allowing

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them access?

Answer:

Considering its mandate, our policy has been to permit another international institution - the International Committee of the Red Cross - to have ongoing and regular access to the facilities and the individual detainees at Guantanamo. Nevertheless, in the interest of transparency and dialogue, the Department of Defense has also offered the UN special rapporteurs the same level of access to the facility that is given to members of the United States Congress.

This offer and visits of the hundreds of journalists, Members of Congress, detainee lawyers and others to Guantanamo demonstrate that the United States has nothing to hide.

We hope that the Special Rapporteurs will take advantage of this offer to see for themselves the detention facilities at Guantanamo.

IF ASKED

Question:

The UN special rapporteurs announced today that the United States has refused to let them visit GTMO. Is that true?

Answer:

No. As we have said, the Department of Defense invited three UN special rapporteurs to visit Guantanamo with the level of access similar to that it gives members of the U.S. Congress.

As that offer still stands, the United States has not refused them access to the facility.

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